

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 27 CS

Juvenile Delinquents

SPONSOR(S): Antone

TIED BILLS:

IDEN./SIM. BILLS: SB 1668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice Committee	6 Y, 0 N, w/CS	White	White
2) Fiscal Council			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Florida statute does not currently address issues regarding the citizenship of delinquents referred to the Department of Juvenile Justice (DJJ). The bill amends state delinquency law to require the DJJ to determine the citizenship of each child brought into intake based upon government documentation. If the DJJ cannot determine the child's citizenship or if it determines that the child is not a United States (U.S.) citizen, the DJJ must screen the child's name in federal immigration databases. After such screening, the DJJ must notify the appropriate authorities in the Department of Homeland Security of a child:

- For whom the DJJ cannot determine his or her citizenship.
- Who the DJJ has determined is not lawfully present in the U.S.
- Who is an alien lawfully present in the U.S., but who has been found to have committed an act that results in classifying him or her as a deportable alien under the federal Immigration and Nationality Act.

The bill also requires the DJJ to establish a centralized database to maintain citizenship information and to share that information with federal, state, and local law enforcement agencies and the state court system.

Finally, the bill amends numerous sections of ch. 985, F.S., to insure that: (a) private school personnel, like public school personnel under current law, are informed when a juvenile, who attends the private school, is accused of committing a violent, sexual, or felony offense; and (b) courts may enter no-contact orders, where a delinquent is attending, or is eligible to attend, the same private school as a victim or a victim's sibling, as the court may under current law in cases involving public schools.

The bill provides an effective date of October 1, 2006.

The DJJ estimates that the fiscal impact of this bill is \$106,000. See Fiscal Analysis and Economic Impact Statement, *infra*.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill increases: (a) the responsibilities of the Department of Juvenile Justice (DJJ) by requiring it to determine the citizenship of children brought into intake, to notify federal immigration officials of specified children, and to maintain citizenship information in a centralized database; and (b) DJJ's rulemaking authority by requiring it to adopt rules to implement the aforementioned responsibilities.

The bill also increases the responsibilities of the DJJ, law enforcement officials, and state attorneys by requiring them to notify private schools of juveniles who are accused of violent, sexual, or felony offenses.

Maintain public security -- The bill increases the likelihood that federal immigration authorities will be made aware of delinquents who are illegally in the U.S. The bill also insures that private school personnel will be made aware of children in their schools who have been accused of violent, sexual, or felony offenses.

B. EFFECT OF PROPOSED CHANGES:

Disclosure/Notice to Schools Regarding Delinquency Matters: The following provisions in ch. 985, F.S., authorize disclosure of, or require notice to be provided for, specified delinquency information and charges to public school superintendents, principals, or personnel.

- **Section 985.04(3)(a), F.S.**, provides that information in delinquency proceedings is confidential and may only be released to specified entities including the courts, DJJ personnel, the Parole Commission, the Department of Corrections, law enforcement agents, and school superintendents and their designees.
- **Section 985.04(3)(b), F.S.**, requires the DJJ to disclose to school superintendents the presence of children in the DJJ's custody who have a history of criminal sexual behavior with other juveniles, who are alleged to be juvenile sexual offenders, or who have committed crimes relating to sexual battery, prostitution, lewdness and indecent exposure, sexual performance by a child, or providing obscenity to minors. This paragraph further provides that it is a second degree misdemeanor for school employees to improperly disclose this information.
- **Sections 985.04(7)(a), and 985.207(1)(b), F.S.**, require a law enforcement official to notify the superintendent of schools when he or she takes a child into custody for a felony or crime of violence.
- **Section 985.04(7)(b), F.S.**, requires a state attorney to notify the superintendent of schools when he or she charges a child with a felony.
- **Sections 985.04(7)(b) and 985.207(1)(b), F.S.**, require the superintendent of schools to notify school principals within 48 hours of receiving information about a child under the section and requires school principals to immediately notify the child's classroom teachers of that information.
- **Sections 985.215(11)(b) and 985.308(1)(d) and (6), F.S.**, require the DJJ to notify school personnel of the release of a juvenile sexual offender into the community.

Effect of bill: *The bill amends each of the aforementioned sections so that private school principals and personnel are subject to the disclosure and notice provisions in ch. 985, F.S., that apply to public school superintendents, principals, and personnel.*

No-Contact Orders: Under ss. 985.228(4), 985.23(1)(d), 985.231(1)(a), and 985.233(4)(f), F.S., when a court finds that a delinquent or a juvenile prosecuted as an adult is attending, or is eligible to attend, the same public school as a victim or a victim's sibling, the court may enter an order specifying that the delinquent may not contact the victim or victim's sibling at school or on the school bus.

Effect of bill: *The bill amends each of the aforementioned sections so that courts may also enter no-contact orders in cases where the delinquent or juvenile prosecuted as an adult is attending, or is eligible to attend, the same private school as the victim or victim's sibling.*

Immigration and Nationality Act: The Federal Immigration and Nationality Act (INA)¹ governs the admission of all foreigners to the U.S. The INA defines an "alien" as any person not a citizen or national² of the U.S.³ and sets forth the rules for admission to, and exclusion from, the U.S.

The chief categories of admission status under the INA for aliens include the following:

- Nonimmigrant visa status meaning the admission is for a period of time prescribed by the U.S. Attorney General in regulation.⁴ An alien who does not depart at the expiration of this period of time subjects himself or herself to deportation.⁵
- Immigrant visa status meaning the person is a lawful permanent resident of the U.S.⁶ These persons possess Alien Registration Receipt Cards, popularly referred to as green cards.
- Naturalized citizen meaning the person has renounced his or her former nationality and is granted all privileges of a native citizen in the U.S., except that he or she may not become President of the U.S.⁷
- Refugee status meaning the person is not physically present in the U.S. and is seeking admission based upon grounds that he or she is unable or unwilling to return to their country of nationality because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁸
- Asylee status meaning the person is physically present in the U.S. and is seeking admission based upon a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion, if made to return to his or her country of nationality or his or her last place of habitual residence.⁹

Pursuant to the INA, an alien is subject to deportation if he or she falls within one or more of the statutory classes of deportable aliens.¹⁰ The classes of deportable aliens include nonimmigrant aliens who do not maintain the conditions attached to their admission status¹¹ and aliens who commit specified crimes.^{12 13}

¹ Immigration and Naturalization Act of 1952, 8 U.S.C.A. §§ 1101 et seq., as amended.

² A "national" is a citizen of the U.S. or a person who, though not a citizen of the U.S., owes permanent allegiance to the United States. Presently, the only noncitizen nationals of the U.S. are residents of the American Samoa and Swains Island. *The ABC's Of Immigration - Immigration Terminology, Part I*, Siskind's Immigration Bulletin, <http://www.visalaw.com/03aug1/2aug103.html>.

³ 8 U.S.C.A. § 1101(a)(3).

⁴ 8 U.S.C.A. § 1184(a).

⁵ 8 U.S.C.A. § 1227(a)(1).

⁶ 8 U.S.C.A. § 1101(15).

⁷ 8 U.S.C.A. §§ 1422.

⁸ 8 U.S.C.A. § 1101(a)(42).

⁹ 8 U.S.C.A. § 1158(a).

¹⁰ 8 U.S.C.A. § 1227.

¹¹ 8 U.S.C.A. § 1227(a)(1)(C).

¹² See 8 U.S.C.A. § 1227(a)(2) (providing that an alien may be deportable if he or she has committed crimes that include specified moral turpitude offenses, aggravated felonies, drug offenses, domestic violence and stalking offenses, or child abuse).

¹³ As stated in a law review article, the federal statute defining deportable crimes seeks to incorporate by reference hundreds of state and federal criminal offenses. *FINALITY OF CONVICTION, THE RIGHT TO APPEAL, AND DEPORTATION UNDER MONTENEGRO V. ASHCROFT: THE CASE OF THE DOG THAT DID NOT BARK*, 40 USFLR 241, 244-245, Fall 2005.

Bureau of Immigration and Customs Enforcement: The Bureau of Immigration and Customs Enforcement (ICE) within the Department of Homeland Security is responsible for the identification, apprehension and removal of illegal aliens from the U.S., and is further authorized to detain deportable aliens and to place such aliens in removal, i.e., deportation, proceedings before a federal immigration judge.¹⁴

ICE operates the Law Enforcement Support Center (LSEC) and its website states:

Located in Williston, Vermont, the LESC operates 24 hours a day, 365 days a year, to supply real-time assistance to law enforcement officers who are investigating or have arrested foreign-born individuals involved in criminal activity. The primary users of the LESC are state and local law enforcement officers seeking information about aliens encountered in the ordinary course of their daily enforcement activities. The LESC receives queries from federal, state, and local correctional and court systems seeking information about individuals in custody or encountered elsewhere in a criminal justice system. Law Enforcement officers have immediate access to alien records entered in the NCIC (National Crime Information Center) and immigration information from every alien file maintained by the Department of Homeland Security – approximately 93 million records – by accessing the IAQ (Immigration Alien Query) database through the NCIC.¹⁵

Law enforcement officials with probable cause to believe that an alien is in violation of U.S. immigration law may contact the LSEC to determine whether ICE wishes to take custody of the alien.¹⁶

Enforcement of Federal Immigration Laws by State Officers: The INA authorizes states to enter into memorandums of understanding (MOUs) with the Department of Homeland Security, which permit specially trained state law enforcement officers to address immigration violations.¹⁷ Florida executed the first MOU in the U.S. on July 7, 2002, and under that agreement, 35 Florida law enforcement officers have been trained and delegated specific immigration enforcement powers, including the powers to interrogate, collect evidence, and conduct broad immigration investigations. During the first year of the Florida program, 165 immigration arrests were made.¹⁸

Delinquency and Citizenship in Florida: Chapter 985, F.S., which governs delinquency matters in Florida, does not currently address issues regarding the citizenship of children referred to the DJJ.

In its bill analysis,¹⁹ the DJJ indicates that its juvenile probation officers (JPOs) currently ask each child referred to the DJJ during intake whether he or she is a U.S. citizen. According to the DJJ, if the child answers yes, the intake process is completed based on the assumption that the child is in fact a U.S. citizen. If the answer is no, the DJJ notifies the child of his or her right to have the foreign consulate contacted when they are arrested and/or detained.

The DJJ analysis also indicates that it is difficult for a JPO to determine the true citizenship status of a child, as there is typically little documentation available on this issue. To overcome this barrier, the Secretary of the DJJ requested that law enforcement agencies in this state screen the names of each child taken into custody in the LSEC database; however, law enforcement agencies do not consistently

¹⁴ "Prior to the September 11 attacks, immigration services and enforcement were handled by the Immigration and Naturalization Service ("INS"). After the attacks, the INS was abolished and its responsibilities were transferred to the new Department of Homeland Security, which splits immigration and naturalization services and immigration enforcement between United States Citizenship and Immigration Services and ICE, respectively." *Id.* at 278.

¹⁵ <http://www.ice.gov/graphics/news/factsheets/081204lesc.htm>, as accessed on April 2, 2006.

¹⁶ *THE QUINTESSENTIAL FORCE MULTIPLIER: THE INHERENT AUTHORITY OF LOCAL POLICE TO MAKE IMMIGRATION ARRESTS*, 69 ALBLR 179, 181, 2005-2006.

¹⁷ 8 U.S.C.A. § 287(g).

¹⁸ *THE QUINTESSENTIAL FORCE MULTIPLIER: THE INHERENT AUTHORITY OF LOCAL POLICE TO MAKE IMMIGRATION ARRESTS*, 69 ALBLR at 198.

¹⁹ Department of Juvenile Justice Analysis for SB 1668, February 27, 2006.

perform this screening. Further, the LSEC database is limited in that it does not contain the names of all illegal aliens in the U.S.

The DJJ indicates that when a LSEC database screening indicates that a child is an illegal alien that DJJ staff call the appropriate authorities within the Department of Homeland Security; however, the typical result is a voice mail asking for a message. Staff leave a detailed message, but are rarely called back. Further, when a person does answer the call, the response is, “frequently that delinquents are not a high priority.”²⁰

Effect of bill: *The bill creates subsection (6) of s. 985.21, F.S., to require the DJJ to determine the citizenship of each child brought into intake based upon government documentation. If the DJJ cannot determine the child’s citizenship or if it determines that the child is not a United States (U.S.) citizen, the DJJ must screen the child’s name in federal immigration databases. After such screening, the DJJ must notify the appropriate authorities in the Department of Homeland Security of a child:*

- *For whom the DJJ cannot determine his or her citizenship.*
- *Who the DJJ has determined is not lawfully present in the U.S.*
- *Who is an alien lawfully present in the U.S., but who has been found to have committed an act that results in classifying him or her as a deportable alien under the federal Immigration and Nationality Act.*

The bill also requires the DJJ to establish a centralized database to maintain citizenship information collected and to share that information with federal, state, and local law enforcement agencies and the state court system.

Finally, the bill requires the DJJ to adopt rules to implement the subsection.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.04, F.S., to refer to private school principals.

Section 2. Amends s. 985.207, F.S., to refer to private school principals.

Section 3. Amends s. 985.21, F.S., to require the DJJ to: determine the citizenship of children; access federal immigration databases; notify federal immigration officials of specified children; maintain and share citizenship information; and adopt rules.

Section 4. Amends s. 985.215, F.S., to clarify that “school personnel” means personnel at public and private schools.

Section 5. Amends s. 985.228, F.S., to refer to private schools.

Section 6. Amends s. 985.23, F.S., to refer to private schools.

Section 7. Amends s. 985.231, F.S., to refer to private schools.

Section 8. Amends s. 985.233, F.S., to refer to private schools.

Section 9. Amends s. 985.208, F.S., to clarify that “schools” means public and private schools.

Section 10. Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

²⁰ Department of Juvenile Justice Analysis for SB 1668 at p. 3.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None apparent.

2. Expenditures:

According to the DJJ, the fiscal impact of this bill will be approximately \$98,000 for the employment of two full-time-employees to conduct the citizenship screenings required for youth by the bill. Further, the DJJ estimates that it will cost \$8,000 for it to reprogram the Juvenile Justice Information System in order to maintain citizenship information as required by the bill. Accordingly, the total fiscal impact is projected to be \$106,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None apparent.

2. Expenditures:

None apparent.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None apparent.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the DJJ to adopt rules to implement its duties under s. 985.21(6), F.S., relating to the citizenship of juveniles referred to the department.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Juvenile Justice Committee adopted a strike everything amendment that removed the bill's provisions authorizing a delinquency court to order the deportation of specified children. Instead, the strike everything amendment requires the DJJ:

- To screen each child brought into intake to determine his or her citizenship, and if the child is not a U.S. citizen or if the DJJ cannot establish the child's citizenship, the DJJ must use federal immigration databases to determine whether the child is lawfully present in the U.S.
- To notify the appropriate authorities within the Department of Homeland Security of a child:
 - Who is alleged to be delinquent and who is not lawfully present in the U.S., or whose citizenship cannot be established.
 - Who is a lawful alien, but who has been found to have committed a crime that subjects him or her to deportation proceedings under the Federal Immigration and Nationality Act.

Finally, the amendment makes changes to numerous sections of ch. 985, F.S., to insure that: (a) private school personnel, like public school personnel under current law, are informed when a juvenile, who attends the private school, is accused of committing a violent, sexual, or felony offense; and (b) courts may enter no-contact orders, where a delinquent is attending, or is eligible to attend, the same private school as a victim or a victim's sibling, as the court may under current law in cases involving public schools.